



INTERIOR BOARD OF INDIAN APPEALS

Estate of Basil Blackburn

1 IBIA 261 (06/26/1972)

Also published at 79 Interior Decisions 422



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ESTATE OF BASIL BLACKBURN

IBIA 72-15

Decided June 26, 1972

Petition for reopening filed by the Bureau of Indian Affairs (Superintendent of the Wind River Reservation) to correct an error in a probate order entered February 21, 1961.

Denied.

Indian Probate: Generally

A determination of the heirs of a deceased Indian is controlling only as to the estate of the decedent, and it does not have collateral application in the determination of the heirs of decedent's relatives.

Indian Probate: Reopening: Waiver of Time Limitation

An estate will not be reopened in the exercise of the Secretary's discretion to waive the time limitations where the interests

remaining in the estate which could be acquired by an omitted heir are insubstantial.

Indian Probate: Reopening: Waiver of Time Limitation

It is in the public interest to issue decisions which remove uncertainties or possible clouds from titles to interests in Indian allotments.

OPINION BY MR. McKEE

Basil Blackburn died intestate January 7, 1960, and his heirs were determined by an order entered by the Hearing Examiner (Indian Probate) on February 21, 1961, at Billings, Montana. He was survived by his widow, six children, and a grandson, Stanley Duane Brown, who had been adopted by strangers. Stanley is the child of a predeceased son, Michael Blackburn. The distribution of the estate was one-half to the widow, a 1/14 interest each to the six surviving children, and a 1/14 interest to the grandson. The decedent was unallotted, but at his death, he held inherited minor fractional interests in eight different allotments on the Wind River Reservation in Wyoming.

Prior to the distribution of his estate, the fractional interests of the heirs in three allotments were sold in August and September of 1960 to another Indian to whom fee patents were issued.

These interests thereby passed out of trust beyond the control of the United States and of the Secretary.

Thereafter, subsequent to the distribution of this estate, the beneficial interests of the heirs in three additional allotments were sold to the Shoshone and Arapahoe tribes of the Wind River Reservation. This sale, in two phases, was consummated in March of 1966 and title remained in the United States in trust for the tribes.

Stanley Duane Brown's share of the proceeds from all sales was \$61.83.

In the fee patents the United States reserved "an undivided 1/2 interest in all of the oil, gas, and other minerals" in trust for the owners, their heirs and assigns." The United States reserved from the lands sold to the tribe "* * *a life estate in all the minerals* * *" in trust, for the owners of the interests transferred.

The decedent's interests in the two allotments which remain unsold were a 7/3240 interest in the allotment of Turtle Looking Round, No. 1320, valued in the inventory of decedent's estate at \$7.50, and a 1/16 interest in the allotment of Sophia Dewey, No. 231c, valued in the inventory at \$125.

On March 6, 1972, Clyde W. Hobbs, Superintendent of the Wind River Agency, filed a petition for the reopening of this probate with the Examiner in Billings, Montana. Attached to the petition were copies of records from the Wind River Agency and the tribal court at the agency by which it appeared there had been omitted from among the heirs entitled to distribution of the decedent's estate, one Leroy Ambrose W. Bull, a second natural son of Michael Blackburn, the predeceased son of this decedent.

From the records attached to the Superintendent's petition, it appeared that said Leroy Ambrose W. Bull (formerly Leroy Blackburn) was a full brother of Stanley Duane Brown, both being the sons of Michael Blackburn and Jenny Lonedog. They had been separately adopted at different dates by different people.

If granted on the basis of the record as it appears before this Board, a reopening of the proceedings in this decedent's estate would lead to the establishment of Leroy Ambrose W. Bull as an heir entitled to a $\frac{1}{28}$ interest in the estate, reducing the share of Stanley Duane Brown from a $\frac{1}{14}$ to a $\frac{1}{28}$.

As a result, Leroy W. Bull would have been entitled during his lifetime to \$30.91 as a distributive share of the sale proceeds derived from the six interests sold prior to the filing of the petition for reopening, and he would have held an interest in the

minerals reserved in the fee patents as follows:

Allotment of Adella Blackburn, No. 1151	77/60480
Allotment of Painted Wolf, No. 1152	1/3456
Allotment of George Blackburn, No. 1153	1/576

He would have held in the remaining unsold interests a $\frac{1}{28}$ of $\frac{7}{3240}$ interest in the allotment of Turtle Looking Round No. 1320, and a $\frac{1}{28}$ of a $\frac{1}{16}$ interest in the allotment of Sophia Dewey, No. 231c. On the basis of the estimated values of these interests shown on the inventory, the interest of Leroy can be computed at 27 cents and \$4.48 respectively.

The petition for reopening was transmitted to the Board by the Examiner in Billings, Montana, by a memorandum dated March 30, 1972, in which he recommended reopening. He also indicated he had been notified that Leroy Ambrose Blackburn had died October 24, 1971. The death of Leroy Blackburn terminated the mineral interest reserved "for life" in the transfers to the tribes. His probable heirs appear to be his widow and two minor children. The hearing in probate of his estate will be part of the next hearing calendar scheduled at the Wind River Reservation.

The Superintendent is charged with the management of the land and with the record keeping as to land ownership of the various allotments

on the Wind River Reservation. He is confronted in this case with the possibility of adverse claims being filed, clouding and disturbing titles which have been considered by the Government and by the individuals involved to have been established for substantial periods of time.

The provisions of 43 CFR 4.242(a) bar reopening by an Examiner after a probate has been closed for more than three years. However, the Secretary in 25 CFR 1.2 has reserved authority in his discretion to make exception to the three-year limitation on reopening to prevent "manifest injustice" resulting from mistake, fraud, or misrepresentation.

A finding is made on the basis of the record that the interests which have been heretofore denied to Leroy W. Bull (nee Blackburn) are insubstantial. Consequently the Secretary is in no position to disturb the conveyances to the tribes or to attempt to obtain a court decree canceling the fee patents.

A further finding is made that titles to the lands must be settled and stabilized and that the Secretary should not exercise discretion to reopen the estate to allow the heirs of Leroy W. Bull a share in the minimal interests remaining in the estate. No manifest injustice to him or his heirs is found in the circumstances of this case, and it is in the public interest to remove this uncertainty concerning the title by issuance of a final decision. The

principles announced by the Assistant Secretary of the Interior in his decision in Jean Holton Westfeldt, A-29604 (November 15, 1963), are applicable here. It was said,

The determination as to whether to sell or lease public land pursuant to the Small Tract Act (the Act of June 1, 1938) as amended, 43 U.S.C. 682a 1970 ed.) is by statute committed to the discretion of the Secretary. If he, or his delegate, decides that it is not in the public interest to dispose of land under the act he may refuse to do so. Joseph M. Schuck et al., A-28603 (August 16, 1961). * * *

A further finding is made that the refusal to exercise discretion to reopen this probate should not be taken as a determination of the ultimate rights of Leroy W. Bull or his heirs to share in the estates of any other blood relatives under the statutes of descent. His rights in the estate of this decedent were determined February 21, 1961. The order determining heirs and this decision of the Board are limited to this estate only.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7; 35 F.R. 1208, the petition for reopening filed herein by the Superintendent of the Wind River Agency is hereby DENIED.

This decision is final for the Department.

//original signed
David J. McKee, Chairman

I concur:

//original signed
James M. Day, Member